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THE GOVERNOR'S LETTER,

Addressed to the Legislature, at the commencement of December Session, 1806.

RICHMOND, December 1st, 1806.

SIR,

NO object is more grand or pleasing, in the estimation of the philanthropist, than an assembly of the representatives of a free people, looking up to them as the fountain of all power and the depository of the sovereignty of the country. History affords no proof of the existence of a system similar to our own, in any age or nation of antiquity, nor does it appear that such a plan ever formed a part of the speculations of their greatest sages; and if we turn our eyes to the present state of three quarters of the globe, we shall find nothing to console the friends of representative democracy. It is in the United States only, that we acknowledge the power, and bow to the sovereignty of the people, in the respect which we pay to their representatives. The General Assembly of Virginia, convened from every portion of its territory, bringing with them the wishes, the principles, and the intelligence of their constituents, the guardians of the public interests, and superintending every department of our political concerns, are approached, through you, with all the respect due to their character. It is the business of the Executive to attend to the faithful execution of the laws; it is right that they should render to the representatives of the people, an account of the manner in which they discharge that duty, and communicate to them such defects in the laws as may have been discovered in their operation; and although there is no express provision in our constitution authorising the Executive department to communicate its opinions on any measures of improvement, or promotive of the public welfare, I am well assured that such opinions, when imparted in the proper spirit, will always receive a due attention. Influenced by these impressions, I beg leave to make the following communication to the legislature.

The duties of the Executive imposed by the constitution or the general laws of the land, they trust, have been faithfully executed, but have not been diversified by any remarkable incident worthy of communication. They rejoice at the happiness of the people under the operation of equal laws provided by the wisdom of the Legislature for the protection of their liberties and property.

The public institutions in this city have been objects of the particular attention of the Executive. The manufactory of arms has been conducted, as heretofore, under the superintending vigilance and skill of the ingenious Major John Clarke, with a success equal to the most sanguine expectations of the friends of that useful and valuable establishment. A detailed report of its operations will be prepared as usual, by the superintendent, and will form the subject of a subsequent communication. At present I beg leave to observe that by the act of the fifth of February last, the sum of forty thousand dollars was appropriated for the expense of manufacturing arms, including officers' salaries, with an express restriction that the operations should be so conducted as to prevent the expenditure of a greater sum, and that it should not be lawful for the Auditor to issue warrants to a greater amount. It was manifest that to keep the institution in operation, and at the same time to keep within the limits of the appropriation, there would be a necessity for retrenching the expense of the establishment. Accordingly, those of the artificers were discharged whose services could be spared with the least injury, and every exertion was made to comply with the wishes of the Legislature, by keeping within the limits of the restriction imposed. But in an establishment so extensive as our Manufactory of Arms, it is impossible, on the first experiment, to foresee, with certainty, what particular systems of operation will keep the institution in motion for a given time, on a given sum—and it was found, some time in the month of October, that the expenses had already equalled the appropriation which the Executive were bound not to exceed. Thus situated, the proper course to be pursued, became an important object of anxious enquiry. To have permitted the establishment to remain idle, by discontinuing its operations until the meeting of the Assembly, would have been attended with the most serious inconvenience and injury. Waving the consideration of all other disadvantages of such a procedure, it will perhaps be sufficient to observe that the most of the Artificers had been induced, by the promise of employment, to come to Virginia from remote parts of the union, and in many instances there were actual contracts still in force between them and the Commonwealth. It was conceived that if we failed to furnish them with employment, by discontinuing the operations of the Manufactory of Arms, they would be absolved from their obligations to the public; and depending on employment for subsistence, they would have been compelled to seek it elsewhere, and to abandon the institution. They had been procured, after much trouble, with great difficulty and expense; they had arrived at great skill in their respective branches of business, and had become attached to the institution. Had they been compelled to abandon it, their loss could not have been supplied but at great expense and after a considerable lapse of time, during which this important establishment would have languished or remained idle. It was therefore conceived by the Executive to be their duty to retain the services of these valuable men, provided it could be done without a departure from the intentions of the Legislature, which they hold in too high respect ever knowingly to violate. It was communicated to them that the Artificers were willing to continue in the public employment in carrying on the operations of the Manufactory of Arms, although they knew that there was no law to provide for their payment, and that the Executive had no right to make any contract to compromise the public faith. They demanded no such contract, and if demanded, none would have been made. They were willing to throw themselves on the liberality of the Assembly, provided the Executive would permit them to proceed in their usual employment, and would promise to state the case and recommend them to the consideration of the Legislature. The Executive could not hesitate a moment to accede to these terms, and directed the operations to be carried on as usual, and such articles to be purchased by the Superintendent as should be absolutely necessary to the progress of the establishment, the persons of whom they were purchased agreeing to rest their claim for payment on the same footing with that of the claims of the Artificers. The Superintendent had also, a considerable time before, requested some merchants of this city, to procure a quantity of steel, files and flints, essentially necessary for the future use of the Manufactory of Arms, and although the merchants who had procured these articles had expected immediate payment, yet they also, consented to wait until it should be provided for by the Assembly. I now take much pleasure in most heartily recommending the claims of the Artificers to the early con-

sideration of the Legislature, as also the other claims above mentioned. I most solemnly assure the General Assembly that the course pursued by the Executive has not arisen from any wish to evade the law of the last session by expending on this object a larger sum than was appropriated—and it is hoped that their conduct will be approved when it is remembered that the subject is completely within the power of the Assembly, and that the expenses incurred since the last appropriation was exhausted, may justly be considered as forming items in the expenses of the new year; over the appropriations of which the Legislature have full control, and may enlarge or limit them at pleasure. If the present Legislature should pursue the same policy which influenced the last, in restraining the expenses of this establishment within certain limits, I have the pleasure to assure the General Assembly, that the experience of the last year will enable the Executive to continue the operations, and at the same time to keep within the bounds prescribed. But I beg to be indulged with some further observations, and to recommend to the fostering care of the Legislature, this noble institution, which arrests the attention of every stranger, extorts even from the European traveller the tribute of high admiration, and if put into the extensive operation of which it is capable, would ensure to us the all important object of placing in the hands of the whole of our militia, arms equal, if not superior to any in the world. The blessings which we enjoy under our free constitutions have been procured by the blood of our ancestors, and can never be too highly estimated. Do we not undervalue them when we remain without the means of defending them? The history of nations teaches the melancholy truth that justice and propriety of conduct towards others will afford but poor guards for our future safety. To be protected from insult, injury and invasion, we must depend on means, which, in the estimation of other nations, are more substantial. We must be able to repel force by force; and when inevitable necessity points to war, we must be prepared with the instruments of destruction. With this view the Legislature have erected at great expense, this noble establishment, in a situation the most eligible that can be conceived, and it is superintended by genius and skill that need not shrink from any comparison. I therefore most respectfully submit to the consideration of the Assembly, whether we ought not to avail ourselves of all the advantages of our situation, by putting this institution into full and extensive operation.

But while I recommend the fabrication of new arms, it is my duty to state to the Legislature, that of the arms heretofore distributed to the militia, there has been a loss and destruction truly alarming, which will no doubt attract the serious attention of the Assembly. I have not yet received official information sufficient to pronounce with certainty on the extent of this loss, should it be received before the close of the session, it shall certainly be communicated. The Assembly however may be assured that the actual loss is very great, and of those remaining, many are so damaged as to be unfit for service. Various applications, from different parts of the state, have been made to the Executive, to prescribe the mode of repairing these arms, and particularly to allow a portion of the militia fines to be applied to that object. But the Executive conceived they had no power over the subject; and it remains for the wisdom of the Legislature to adopt measures more effectually, to prevent the loss of arms, and to provide for repairing them when damaged.

The Penitentiary establishment has demanded and received much of the attention of the Executive. This institution, founded on benevolence, and on which the friends of humanity have dwelt with so much pleasure, has not yet been sufficiently long in operation to receive all the improvements which may be dictated by experience and observation. I have the pleasure to communicate, for the information of the General Assembly, a report from the keeper of the Penitentiary, exhibiting a statement of the number of convicts received in each year since the commencement of the establishment, and the crimes of which they have been convicted. It will be seen that of 233, the total number of convicts that have been sent there for punishment, 152 have been discharged, 5 have escaped, 14 have died, and that there are now 112 in confinement. It exhibits a result which must be pleasing to the friends of the institution, that the number of crimes has not increased since its establishment; and holds out the consoling hope that the introduction of all the amendments which may be suggested by the lights of experience, will occasion a diminution of the number of criminals, and that many of them may be restored to the community useful members of society. Early in the last spring the Executive appointed a committee of two of their own body, Alexander Stuart and William W. Henning, esquires, "to visit the Jail and Penitentiary House, and examine minutely into the manner in which the rules and regulations of the said jail are carried into effect, and also into any other matter which they might judge proper relative to the institution." These gentlemen made their report on the 12th of April, to which I invite the attention of the Legislature as exhibiting those causes which, in the opinion of the Executive, have contributed to render the system expensive to the Commonwealth, and in some respects, unequal to the sanguine expectations of its earlier admirers. One great cause is the "want of co-operation and attention on the part of some of the gentlemen appointed inspectors." "When it is considered that no measure of importance can be adopted by the keeper without the approbation of the acting inspectors," it is manifest "that the want of a regular attendance on their part must be attended with the most serious inconvenience." On this subject, permit me to observe that, the office of inspector is not only a very unpleasant one, but, if properly executed, will require much time and attention; and experience proves that we have no reason to hope for a more regular attendance of the inspectors; unless it shall be induced, or enforced by some other regulations to be adopted by the Legislature. Another cause mentioned in the report, is "the difficulty of enforcing obedience to the rules and regulations prescribed for the government of the convicts, from the necessity imposed by law, of calling in the aid of two inspectors and the Mayor of the city of Richmond, before any adequate punishment can be inflicted." On this subject, I speak more positively, because I speak from experience and actual observation. We have given to the system of mild treatment the fairest trial, and sad experience teaches us, that in many instances nothing but the most rigorous punishments allowed by the law, can restrain the ungovernable spirits of some of the convicts. To the friend of humanity and of the dignity of human nature, it is painful to be compelled to inflict corporal punishments. But, when no others forbear, is misplaced, and becomes injustice to the community.

Five convicts, who had been discharged from the penitentiary, have been returned for second offences, thereby manifesting that no change or reformation had been wrought upon them, by their previous confinement, and the discipline of the institution. I beg leave

to suggest that the 24th section of the act of 1796, which was intended by the Legislature to apply to such cases, and to inflict an increased punishment, is defective, and has never been carried into effect, because it prescribes no mode of legally ascertaining the former conviction of the same person. I submit for the consideration of the Assembly whether it be not advisable in such cases, to direct an investigation in the District Court of Richmond, where may be easily procured the records of the former conviction, and the evidence of the identity of the person.

There is one circumstance, in relation to this institution, which, I conceive, is highly worthy the attention of the Legislature. It is the frequency with which the most desperate and daring attempts are made by the convicts to effect their escape. These plans, although well conceived, and deeply laid, have not succeeded, in any instance, since your last session; but they have sometimes approached the very moment of execution before they have been discovered. Disappointment seemed not to discourage them; and it was at length found necessary to increase the detachment of the Public Guard stationed at the Penitentiary, and to require the constant presence, both day and night, of one of the commissioned officers. It has not since been found advisable to lessen the force stationed there, nor to dispense with the presence of the officer; so that although escapes are thus prevented, the object is accomplished at a vast expense to the community, and greatly to the public injury, by so weakening the Public Guard as to render it less competent to protect the public property in this city, for the preservation of which it was originally established. It is therefore respectfully submitted, whether sound policy does not require an increased severity of punishment for escapes, or attempts to escape.

On the training and disciplining the great body of the militia, so frequently the subject of communication to the Assembly, I forbear to make any observations; not because I deem the subject uninteresting, but because its importance at all times, and particularly in the present aspect of our foreign relations, is so obvious, that it is impossible any thing I could say could increase the impression already existing on the mind of every member of the Assembly. I beg leave, however, to remark, that the rules of discipline as established by Congress in their resolution of the 29th of March, 1779, and which, by the directions of the Assembly, have been distributed among the officers of the militia, have no relation to cavalry exercise or discipline; nor has any system of discipline ever been furnished the officers of cavalry for their information. Permit me to recommend to the consideration of the Assembly a small "Treatise on the new sword exercise for Cavalry," which is said to have been digested, partly from the Prussian and partly from the Hungarian exercise for hussars, and to be universally introduced into the armies of Europe; and is believed to contain the best system of cavalry exercise now extant. I am indebted for this treatise to Major John Clarke, the superintendent of the Manufactory of Arms, who inclosed it to me in a very sensible and well written letter, with the patriotic wish that it might be published and circulated among the officers of cavalry, with the addition of engravings executed in the style of those in Steuben's discipline, exhibiting the horseman in all the various attitudes of performing the motions and evolutions described in the treatise. The Executive approved the plan, but determined, before its execution, to submit it for the consideration of the Assembly.

The increasing expense, with the increasing number of courts martial, arising from the latitude of construction given to certain parts of the militia law, is, I conceive, worthy the attention of the Legislature. Their interposition is the more necessary, because, the construction given to the law varies with different officers in different parts of the state, and even with different officers in the same neighborhood. By the 23d section of the militia law, passed in the session of 1803, it is directed that "any officer who may be guilty of disobedience, or other misbehavior, when on duty, or shall, at any time, be guilty of any conduct unbecoming the character of an officer, shall be put under arrest by his commanding officer, and tried as hereafter directed." Some officers have given a very broad construction to the general words of this section, and have not considered them restrained by any thing to be found in other parts of the same law. Their construction authorises and requires the arrest of officers, for acts which are mere violations of morality or law, in no manner relating to their official character or conduct; and it is believed, that in some cases, simple violations of the rules of decorum have been exhibited as the foundation of arrests. Other officers have given to this section a more limited construction, believing it to be restrained in its application, by the 27th section, which in prescribing the organization of courts martial, speaks of them as being "instituted for the trial of offences as they are to be viewed in a military light," and therefore, in the estimation of the advocates of the limited construction, precludes courts martial from enquiring into acts, which, although they may be violations of the laws of honor or morality, and even of the positive laws of the land, have no relation to the official conduct of the accused. I beg leave to represent that it is believed, the facility of procuring arrests, has in many instances been wantonly abused, to the vexation of individuals, and the injury of the public, and unless restrained, bids fair to absorb a very considerable proportion of the fund usually appropriated to the contingent expenses of government. On some occasions, courts martial have been erected into courts of chivalry, for the trial of nice points of honor, which although important to the parties, did not interest the community; while on others, it is believed they have been made